

1-1 By: Williams, Estes S.B. No. 549
 1-2 (In the Senate - Filed February 13, 2013; February 20, 2013,
 1-3 read first time and referred to Committee on Criminal Justice;
 1-4 April 18, 2013, reported favorably by the following vote:
 1-5 Yeas 6, Nays 0; April 18, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Whitmire	X			
1-8 Huffman	X			
1-9 Carona	X			
1-10 Hinojosa			X	
1-11 Patrick	X			
1-12 Rodriguez	X			
1-13 Schwertner	X			

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to penalties for engaging in organized criminal activity.
 1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
 1-19 SECTION 1. Subsection (a), Section 4, Article 37.07, Code
 1-20 of Criminal Procedure, is amended to read as follows:
 1-21 (a) In the penalty phase of the trial of a felony case in
 1-22 which the punishment is to be assessed by the jury rather than the
 1-23 court, if the offense of which the jury has found the defendant
 1-24 guilty is an offense under Section 71.02 or 71.023, Penal Code, or
 1-25 an offense listed in Section 3g(a)(1), Article 42.12, [of this
 1-26 code] or if the judgment contains an affirmative finding under
 1-27 Section 3g(a)(2), Article 42.12, [of this code,] unless the
 1-28 defendant has been convicted of an offense under Section 21.02,
 1-29 Penal Code, an offense under Section 22.021, Penal Code, that is
 1-30 punishable under Subsection (f) of that section, or a capital
 1-31 felony, the court shall charge the jury in writing as follows:
 1-32 "Under the law applicable in this case, the defendant, if
 1-33 sentenced to a term of imprisonment, may earn time off the period of
 1-34 incarceration imposed through the award of good conduct time.
 1-35 Prison authorities may award good conduct time to a prisoner who
 1-36 exhibits good behavior, diligence in carrying out prison work
 1-37 assignments, and attempts at rehabilitation. If a prisoner engages
 1-38 in misconduct, prison authorities may also take away all or part of
 1-39 any good conduct time earned by the prisoner.
 1-40 "It is also possible that the length of time for which the
 1-41 defendant will be imprisoned might be reduced by the award of
 1-42 parole.
 1-43 "Under the law applicable in this case, if the defendant is
 1-44 sentenced to a term of imprisonment, the defendant [he] will not
 1-45 become eligible for parole until the actual time served equals
 1-46 one-half of the sentence imposed or 30 years, whichever is less,
 1-47 without consideration of any good conduct time the defendant [he]
 1-48 may earn. If the defendant is sentenced to a term of less than four
 1-49 years, the defendant [he] must serve at least two years before the
 1-50 defendant [he] is eligible for parole. Eligibility for parole does
 1-51 not guarantee that parole will be granted.
 1-52 "It cannot accurately be predicted how the parole law and
 1-53 good conduct time might be applied to this defendant if [he is]
 1-54 sentenced to a term of imprisonment, because the application of
 1-55 these laws will depend on decisions made by prison and parole
 1-56 authorities.
 1-57 "You may consider the existence of the parole law and good
 1-58 conduct time. However, you are not to consider the extent to which
 1-59 good conduct time may be awarded to or forfeited by this particular
 1-60 defendant. You are not to consider the manner in which the parole
 1-61 law may be applied to this particular defendant."

2-1 SECTION 2. Subsection (d), Section 508.145, Government
2-2 Code, is amended to read as follows:

2-3 (d)(1) An inmate serving a sentence for an offense described
2-4 by Section 3g(a)(1)(A), (C), (D), (E), (F), (G), (H), (I), (J), or
2-5 (K), Article 42.12, Code of Criminal Procedure, ~~[or for]~~ an offense
2-6 for which the judgment contains an affirmative finding under
2-7 Section 3g(a)(2) of that article, ~~[or for]~~ an offense under Section
2-8 20A.03, Penal Code, or an offense under Section 71.02 or 71.023,
2-9 Penal Code, is not eligible for release on parole until the inmate's
2-10 actual calendar time served, without consideration of good conduct
2-11 time, equals one-half of the sentence or 30 calendar years,
2-12 whichever is less, but in no event is the inmate eligible for
2-13 release on parole in less than two calendar years.

2-14 (2) Notwithstanding Subdivision (1), an inmate
2-15 serving a sentence for an offense described by Section 3g(a)(1)(E),
2-16 Article 42.12, Code of Criminal Procedure, is not eligible for
2-17 release on parole if the inmate is serving a sentence for an offense
2-18 for which punishment was enhanced under Section 12.42(c)(4), Penal
2-19 Code.

2-20 SECTION 3. Subsection (a), Section 508.149, Government
2-21 Code, as amended by Chapters 1 (S.B. 24) and 122 (H.B. 3000), Acts
2-22 of the 82nd Legislature, Regular Session, 2011, is reenacted and
2-23 amended to read as follows:

2-24 (a) An inmate may not be released to mandatory supervision
2-25 if the inmate is serving a sentence for or has been previously
2-26 convicted of:

2-27 (1) an offense for which the judgment contains an
2-28 affirmative finding under Section 3g(a)(2), Article 42.12, Code of
2-29 Criminal Procedure;

2-30 (2) a first degree felony or a second degree felony
2-31 under Section 19.02, Penal Code;

2-32 (3) a capital felony under Section 19.03, Penal Code;

2-33 (4) a first degree felony or a second degree felony
2-34 under Section 20.04, Penal Code;

2-35 (5) an offense under Section 21.11, Penal Code;

2-36 (6) a felony under Section 22.011, Penal Code;

2-37 (7) a first degree felony or a second degree felony
2-38 under Section 22.02, Penal Code;

2-39 (8) a first degree felony under Section 22.021, Penal
2-40 Code;

2-41 (9) a first degree felony under Section 22.04, Penal
2-42 Code;

2-43 (10) a first degree felony under Section 28.02, Penal
2-44 Code;

2-45 (11) a second degree felony under Section 29.02, Penal
2-46 Code;

2-47 (12) a first degree felony under Section 29.03, Penal
2-48 Code;

2-49 (13) a first degree felony under Section 30.02, Penal
2-50 Code;

2-51 (14) a felony for which the punishment is increased
2-52 under Section 481.134 or Section 481.140, Health and Safety Code;

2-53 (15) an offense under Section 43.25, Penal Code;

2-54 (16) an offense under Section 21.02, Penal Code;

2-55 (17) a first degree felony under Section 15.03, Penal
2-56 Code;

2-57 (18) an offense under Section 43.05, Penal Code; ~~[or]~~

2-58 (19) an offense under Section 20A.02, Penal Code;

2-59 (20) ~~[(18)]~~ an offense under Section 20A.03, Penal
2-60 Code; or

2-61 (21) a first degree felony under Section 71.02 or
2-62 71.023, Penal Code.

2-63 SECTION 4. Subsection (b), Section 71.02, Penal Code, is
2-64 amended to read as follows:

2-65 (b) Except as provided in Subsections (c) and (d), an
2-66 offense under this section is one category higher than the most
2-67 serious offense listed in Subsection (a) that was committed, and if
2-68 the most serious offense is a Class A misdemeanor, the offense is a
2-69 state jail felony, except that if the most serious offense is a

3-1 felony of the first degree, the offense is a felony of the first
 3-2 degree punishable by imprisonment in the Texas Department of
 3-3 Criminal Justice for life or for any term of not more than 99 years
 3-4 or less than 15 years.

3-5 SECTION 5. Section 71.023, Penal Code, is amended to read as
 3-6 follows:

3-7 Sec. 71.023. DIRECTING ACTIVITIES OF [CERTAIN] CRIMINAL
 3-8 STREET GANGS. (a) A person commits an offense if the person, as
 3-9 part of the identifiable leadership of a criminal street gang,
 3-10 knowingly [~~initiates, organizes, plans,~~] finances, directs,
 3-11 [~~manages,~~] or supervises the commission of, or a conspiracy to
 3-12 commit, one or more of the following offenses by [~~a criminal street~~
 3-13 ~~gang or~~] members of a criminal street gang:

3-14 (1) a felony offense that is listed in Section
 3-15 3g(a)(1), Article 42.12, Code of Criminal Procedure;

3-16 (2) a felony offense for which it is shown that a
 3-17 deadly weapon, as defined by Section 1.07, was used or exhibited
 3-18 during the commission of the offense or during immediate flight
 3-19 from the commission of the offense; or

3-20 (3) an offense that is punishable as a felony of the
 3-21 first or second degree under Chapter 481, Health and Safety Code
 3-22 [~~with the intent to benefit, promote, or further the interests of~~
 3-23 ~~the criminal street gang or to increase the person's standing,~~
 3-24 ~~position, or status in the criminal street gang].~~

3-25 (b) An offense under this section is a felony of the first
 3-26 degree punishable by imprisonment in the Texas Department of
 3-27 Criminal Justice for life or for any term of not more than 99 years
 3-28 or less than 25 years.

3-29 [~~(c) Notwithstanding Section 71.01, in this section,~~
 3-30 ~~"criminal street gang" means:~~

3-31 [~~(1) an organization that:~~

3-32 [~~(A) has more than 10 members whose names are~~
 3-33 ~~included in an intelligence database under Chapter 61, Code of~~
 3-34 ~~Criminal Procedure;~~

3-35 [~~(B) has a hierarchical structure that has been~~
 3-36 ~~documented in an intelligence database under Chapter 61, Code of~~
 3-37 ~~Criminal Procedure;~~

3-38 [~~(C) engages in profit-sharing among two or more~~
 3-39 ~~members of the organization; and~~

3-40 [~~(D) in one or more regions of this state served~~
 3-41 ~~by different regional councils of government, continuously or~~
 3-42 ~~regularly engages in conduct:~~

3-43 [~~(i) that constitutes an offense listed in~~
 3-44 ~~Section 3g(a)(1), Article 42.12, Code of Criminal Procedure;~~

3-45 [~~(ii) in which it is alleged that a deadly~~
 3-46 ~~weapon is used or exhibited during the commission of or immediate~~
 3-47 ~~flight from the commission of any felony offense; or~~

3-48 [~~(iii) that is punishable as a felony of the~~
 3-49 ~~first or second degree under Chapter 481, Health and Safety Code; or~~

3-50 (2) an organization that, in collaboration with an
 3-51 organization described by Subdivision (1), engages in conduct or
 3-52 commits an offense or conspires to engage in conduct or commit an
 3-53 offense described by Subdivision (1)(D).]

3-54 SECTION 6. The changes in law made by this Act apply only to
 3-55 an offense committed on or after the effective date of this Act. An
 3-56 offense committed before the effective date of this Act is governed
 3-57 by the law in effect when the offense was committed, and the former
 3-58 law is continued in effect for that purpose. For purposes of this
 3-59 section, an offense was committed before the effective date of this
 3-60 Act if any element of the offense occurred before that date.

3-61 SECTION 7. To the extent of any conflict, this Act prevails
 3-62 over another Act of the 83rd Legislature, Regular Session, 2013,
 3-63 relating to nonsubstantive additions to and corrections in enacted
 3-64 codes.

3-65 SECTION 8. This Act takes effect September 1, 2013.

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